



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160965

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly calculated Petitioner's FS benefits in October, November, and December 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 5, 2014 Petitioner completed a renewal for his FS benefits.
3. The agency determined that Petitioner's monthly FS benefits were reduced from \$189 to \$16 effective October 1, 2014. This was determined based on the information Petitioner provided

during his renewal. The agency budgeted \$1,616.03 in gross income. Petitioner's child support payments were calculated at \$340 per month. Petitioner's rent was \$200 and he was responsible for a phone payment. The agency used these figures in calculating Petitioner's monthly FS benefits effective October 1, 2014. The agency sent Petitioner notice of this reduction on September 12, 2014.

4. On October 1, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing. Petitioner's benefits were continued pending the hearing and the decision from the Administrative Law Judge.
5. The agency reviewed the case in preparation for the fair hearing scheduled for October 23, 2014. In the agency's review of the case the agency determined that they had incorrectly calculated Petitioner's monthly FS benefits. The agency determined that Petitioner's monthly FS benefits should have been \$40, not \$16. The agency had used the two highest pay stubs from Petitioner's employment with [REDACTED] instead of the two most recent paystubs. Petitioner's monthly gross income for October, November, and December 2014 is \$1,164.53. Petitioner's child support payments are \$265.31 per month. There were no other corrections.
6. The agency informed Petitioner of their corrections. Petitioner informed the agency that his hours of employment with [REDACTED] had decreased. The agency verbally informed Petitioner and sent Petitioner a notice stating that they needed verification of this decrease in hours. Petitioner did not provide the agency verification until December 9, 2014, the date of his rehearing. The agency did not close Petitioner's case when he failed to return the verification, however, his monthly FS benefits remained at \$40.
7. On October 23, 2014 Petitioner failed to appear for his hearing. On October 24, 2014 Assistant Administrator, Kenneth Duren, issued a decision dismissing Petitioner's appeal because Petitioner had failed to appear.
8. On November 5, 2014 Petitioner sent a letter stating that he had missed his hearing because his god-father had died of colon cancer one week before his hearing date, and he was in a dark and lonely place at that time. On November 17, 2014 the undersigned ALJ granted Petitioner's rehearing request. A hearing was held on December 9, 2014. On December 9, 2014 Petitioner provided the verification that the agency requested in October.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the agency's calculations in this case. Although the agency had initially miscalculated Petitioner's monthly FS benefits, the agency fixed their error. I note that there were two causes for Petitioner's reduced FS benefits effective October 1, 2014. The first cause is that Petitioner's gross income had increased. Prior to Petitioner's renewal, Petitioner's gross income was \$946.00. At his renewal Petitioner verified that his gross income had increased to \$1,164.53. The second cause for the reduction was the 2014 farm bill. Previously everyone receiving food shares qualified for the \$450 Heating Standard Utility Allowance. It did matter whether or not the person was responsible for his or

her utilities because the Wisconsin Department of Administration (DOA) issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance.

The 2014 Farm Bill changed Wisconsin's practice of allowing all FS households to take the maximum utility allowance. The 2014 Farm Bill requires a household to have received a WHEAP or energy assistance payment of greater than \$20 to receive the HSUA of \$450. 7 U.S.C. 2014(e)(6)(C)(ii)(I) Therefore, "households that have not received WHEAP will receive the appropriate utility standard based on the utility obligation(s) incurred by the household." *DHS Operations Memo 14-16 Amended*.

In this case Petitioner did not receive WHEAP and his monthly utility obligations are a phone. Petitioner only qualifies for the \$30 deduction for his phone instead of the \$450 standard deduction he previously received.

At the hearing on December 9, 2014 Petitioner provided documentation that his gross income had decreased since he completed his renewal in September. The agency asked for that verification in October, and Petitioner had failed to provide it. Petitioner stated that he was going through a dark time due to the death of his god-father, and may have overlooked the agency's notice requesting the verification. A change reported in December, will go into effect in January. The agency stated that they will make the proper changes effective in January. If the agency fails to do this, Petitioner may file another appeal.

CONCLUSIONS OF LAW

The agency correctly calculated Petitioner monthly FS benefits for October, November, and December 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of December, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability